

Message Text

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NSC-10 PA-03 RSC-01 PRS-01 SPC-03 SS-15 ACDA-19 SY-10

USSS-00 EB-11 DOTE-00 FAA-00 CAB-09 JUSE-00 COME-00

AID-20 TRSE-00 SCA-01 OMB-01 AF-10 ARA-16 EUR-25

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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO IMMEDIATE

INFO USMISSION USUN NEW YORK IMMEDIATE

C O N F I D E N T I A L STATE 184358

E.O. 11652: GDS

TAGS: JA, PINS, PFOR, UN

SUBJECT: CONVENTION ON PROTECTION OF DIPLOMATS

REF: (A) TOKYO 11201; (B) USUN 2806; (C) USUN 2831

1. AS EMBASSY AWARE, WE HAVE HAD DIFFICULTY WITH JAPAN ON CONVENTION ON PROTECTION OF DIPLOMATS, WHICH WILL BE BEFORE 28TH UNGA. PARA 7 REF A NOTES THAT PROBLEM IS WITH MINISTRY OF JUSTICE AND RESULTS PRIMARILY FROM CONCERN OVER TWO MAIN ISSUES. WE BELIEVE IT MAY BE USEFUL FOR EMBASSY TO PROVIDE MFA WITH ADDITIONAL ARGUMENTS IN SUPPORT OF U.S. CONFIDENTIAL

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POSITIONS. WE WOULD ALSO LIKE TO HAVE BETTER IDEA OF CURRENT STATUS THIS QUESTION WITHIN GOJ.

2. ACCORDINGLY, REQUEST EMBASSY MAKE APPROACH AT APPRO-

PRIATE LEVEL IN MFA AND MAKE FOLLOWING POINTS:

(A) JAPANESE INDICATED IN AUGUST 30-31 CONSULTATIONS THAT MINISTRY OF JUSTICE BELIEVES CRIMES AGAINST DIPLOMATS RARE AND NOT WORTH SPECIAL CONSIDERATION. THE POINT, WE BELIEVE, IS THAT INTERNATIONAL EFFORTS TO DEAL WITH PROBLEM OF USE OF VIOLENCE FOR POLITICAL ENDS MUST BE DIRECTED TO THOSE AREAS WHICH PRESENT MOST TEMPTING AND VULNERABLE TARGETS AND THAT THIS MAY BE ACHIEVABLE ONLY ON STEP-BY-STEP BASIS. THIS IS, OF COURSE, RATIONALE FOR SPECIAL MEASURES FOR THE PROTECTION OF AIR SECURITY, AND WE CONSIDER PROTECTION OF DIPLOMATS CONVENTION IMPORTANT ADDITIONAL

STEP TOWARD LEGAL STRUCTURE WHICH CAN DEAL EFFECTIVELY WITH THE OVERALL PROBLEM.

(B) WE MADE CLEAR IN NEW YORK THAT, WHILE WE WISH TO KEEP CHANGES IN ILC DRAFT TO MINIMUM TO AVOID RE-OPENING MAJOR ISSUES, WE PREPARED TO SUPPORT TECHNICAL CHANGES NECESSARY TO ARRIVE AT WIDELY ACCEPTABLE CONVENTION. WE CONSIDER IT IMPORTANT TO SUCCESS OF CONVENTION THAT JAPANESE TAKE POSITIVE APPROACH TO CONVENTION AND HELP US LINE UP SUPPORT. AT SAME TIME, WE PREPARED TO WORK CLOSELY WITH GOJ TO ENSURE ITS LEGAL CONCERNS ARE MET.

(C) WE UNDERSTAND MINISTRY OF JUSTICE IS CONCERNED ABOUT PROVISION IN ILC DRAFT ARTICLES FOR UNIVERSAL JURISDICTION, I.E., ASSUMPTION OF JURISDICTION BY ALL STATES PARTIES OVER ANY COVERED OFFENSE NO MATTER WHERE IT OCCURS. DISCUSSIONS IN NEW YORK (REFS B AND C) HAVE MADE CLEAR THAT OTHERS AMONG OUR CLOSE FRIENDS ALSO HAVE PROBLEM WITH PROVISION FOR UNIVERSAL JURISDICTION, AND WE BELIEVE THAT IF UNIVERSAL JURISDICTION PROVES TO BE REAL OBSTACLE TO AGREEMENT ON CONVENTION, IT WILL BE ENTIRELY POSSIBLE TO WORK OUT SATISFACTORY MEANS OF HANDLING THIS PROBLEM, PERHAPS ALONG LINES OF TREATMENT IN HAGUE AND MONTREAL CONVENTIONS ON AIR SECURITY, WHICH REQUIRE THE CONFIDENTIAL

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ESTABLISHMENT OF JURISDICTION TO COVER ONLY THOSE CASES WITH WHICH A STATE IS DIRECTLY CONCERNED AND THOSE IN WHICH IT DOES NOT EXTRADITE AN ALLEGED OFFENDER. IN ANY EVENT, WE DO NOT BELIEVE THIS ISSUE SHOULD BE AN OBSTACLE TO ADOPTION OF SATISFACTORY CONVENTION.

(D) OTHER MAJOR SUBSTANTIVE ISSUE OF CONCERN TO MINISTRY OF JUSTICE IS FACT THAT ILC DRAFT WOULD APPLY TO ANY VIOLENT ATTACK AGAINST DIPLOMAT REGARDLESS OF MOTIVE. JAPANESE REP IN NEW YORK SUGGESTED THAT OFFENSE BE COVERED ONLY IF CARRIED OUT "WITH AIM OF DISTURBANCE OF OFFICIAL FUNCTIONS OR IMPROPERLY TAKING ADVANTAGE OF (DIPLOMATIC) STATUS OR DISRUPTING RELATIONS AMONG STATES." WE

BELIEVE THIS WOULD BE HIGHLY UNDESIRABLE ADDITION TO CONVENTION BECAUSE IT WOULD REQUIRE PROOF OF SUBJECTIVE ELEMENT, WHICH IS FREQUENTLY VERY DIFFICULT. WHILE IT IS TRUE THAT CONVENTION WOULD COVER "CRIME OF PASSION" OR OTHER ORDINARY VIOLENT CRIME AGAINST A DIPLOMAT, THIS WOULD NOT APPEAR TO CREATE PRACTICAL DIFFICULTIES IN LIGHT OF FACT THAT STATE ON WHOSE TERRITORY OFFENSE COMMITTED NORMALLY REQUESTS EXTRADITION (IF NECESSARY) AND PROSECUTES IN SUCH A CASE EVEN IN ABSENCE OF CONVENTION. TO EXTENT CONVENTION IS OVER-BROAD IN THIS RESPECT, THAT BREADTH APPEARS CLEARLY NECESSARY TO ENSURE ACCOMPLISHMENT OF OBJECTIVES OF CONVENTION AND, IN ANY EVENT, SIMPLY

RECOGNIZES FACT THAT DIPLOMATS ARE ENTITLED TO SPECIAL PROTECTION FROM ATTACK, EVEN OF NON-POLITICAL VARIETY. MOREOVER, SEVERAL OF OUR FRIENDS HAVE SUGGESTED IN NEW YORK THAT COVERAGE BE LIMITED TO THOSE CASES IN WHICH OFFENDER KNEW OR HAD REASON TO KNOW OF VICTIM'S OFFICIAL STATUS. WE BELIEVE SUCH A LIMITATION WOULD NARROW THE CONVENTION'S COVERAGE TO AVOID INCLUSION OF MOST "ORDINARY" CRIMES OF VIOLENCE AND SHOULD MEET MAIN JAPANESE CONCERNS IN THIS AREA (SEE PARA 2, REF B AND PARA 1, REF C FOR FURTHER BACKGROUND ON THESE ISSUES).

(E) ANOTHER SUGGESTION JAPANESE MADE IN NEW YORK IS THAT GENERAL CONCEPT OF "VIOLENT ATTACK", WHICH IS BASIC TERM DEFINING ACTS COVERED BY ILC DRAFT, BE REPLACED WITH LIST OF SPECIFIC CRIMES, E.G. MURDER, KIDNAPPING, ETC.,
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IN ORDER TO MAKE COVERAGE OF CONVENTION SOMEWHAT CLEARER. WE BELIEVE THIS IDEA DESERVES SERIOUS CONSIDERATION AND COULD FURTHER MITIGATE JAPANESE CONCERNS ABOUT BREADTH OF CONVENTION.

(F) AT YOUR DISCRETION, YOU MAY WISH TO INDICATE WILLINGNESS TO DISCUSS THESE MATTERS DIRECTLY WITH MINISTRY OF JUSTICE IF THAT WOULD HELP.

(G) SINCE PROCEDURAL QUESTION OF PRIORITY TO BE ATTACHED TO THIS ITEM IN SIXTH COMMITTEE AT UNGA WILL BE COMING UP VERY SHORTLY, WE HOPE VERY MUCH THAT GOJ WILL BE IN POSITION VERY SOON TO GIVE FULL SUPPORT TO PRIORITY CONSIDERATION AND TO CONVENTION ITSELF.

3. WOULD APPRECIATE REPORT AND ANY SUGGESTIONS EMBASSY MAY HAVE ON BEST WAY TO PURSUE ISSUE FURTHER IF THIS SEEMS NECESSARY.

4. POINTS SET FORTH PARA 2 MADE TO FIRST SECRETARY NITTA OF JAPANESE EMBASSY A.M. SEPTEMBER 17. DEPTOFF STRESSED OUR WILLINGNESS UNDERTAKE WHATEVER TECHNICAL DISCUSSIONS

NECESSARY IN WASHINGTON OR ELSEWHERE TO ENSURE FULL AND
ACTIVE JAPANESE SUPPORT FOR CONVENTION. NITTA SUGGESTED
IT WOULD BE USEFUL FOR EMBASSY TO APPROACH MINISTRY OF
JUSTICE DIRECTLY. RUSH

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